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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA S.C. 29211  
TELEPHONE 803-758-3970

April 11, 1985

The Honorable Frank Powell  
Sheriff of Richland County  
1400 Huger Street  
Columbia, South Carolina 29201

Dear Sheriff Powell:

You have inquired of this Office as to whether or not the Wildewood subdivision can contract with Richland County so as to receive additional law enforcement protection and services. The subdivision pursuant to such contract would pay a particular amount in return for such services.

The general law in this State presently requires a sheriff and his deputies to patrol their county and provide law enforcement services to its citizens. See: Sections 23-13-50 et seq., and 23-15-40 et seq., 1976 Code of Laws. As a matter of public policy, a political subdivision, such as a county, is prohibited from entering into a contract by which it receives remuneration from a citizen for the performance of a public duty which is imposed on it by law, either expressly or by implication. McQuillin, Municipal Corporations, Section 29.08 p. 234. As stated by our Supreme Court in Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 360 (1929) "[a]s a general rule, [a governmental body] ... may not contract with ... the public to discharge a purely public duty owed to the public generally." The rationale of the rule, noted the Court, "is grounded upon the theory that such a contract would 'restrict the discretion of the ... [governmental body] ...; that is, embarrass or control it in the exercise of governmental functions, which cannot be surrendered or abrogated.'" 147 S.E. at 360.

In a prior opinion of this Office dated February 10, 1983, it was stated that a municipality's ability to contract to provide law enforcement protection was limited to contracts with areas outside the corporate limits. Such opinion is consistent

REQUEST LETTER

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with the general authority cited above and would in all likelihood govern the situation you present. Moreover, we are unaware of any statute which would expressly authorize such an agreement. 1/

Referencing the above, in the opinion of this Office, Richland County is not authorized to enter into a contract with the Wildewood subdivision whereby the subdivision would receive additional law enforcement protection and services for a fee. If there are any questions, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions

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1/ By comparison, while a county and county officials are not as a general matter obligated to perform services within the corporate limits of a city, the General Assembly has provided by statute for municipal residents to contract for county services in certain situations. Section 4-9-40 of the Home Rule Act authorizes a county to "perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters." (emphasis added). Such services cannot be provided, however where the service "is being provided by the municipality or has been budgeted or funds have been applied for" unless permission is given by the municipal governing body. See also, § 23-27-10 et seq. and § 4-9-30(5) [authorizes county to create special districts for police protection]; Op. Atty. Gen., October 2, 1984. Of course, in the situation you reference, the community is not in the corporate limits of any municipality.